

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

HON. SALLY S. DUNCAN

CLERK OF THE COURT  
M. Cabral  
Deputy

STATE OF ARIZONA

MANUEL DESI RUBALCABA

v.

JOHN BACON (001)

JOHN AGRA

COURT ADMIN-CRIMINAL-CCC  
PRETRIAL SERVICES AGENCY-CCC  
VICTIM SERVICES DIV-CA-CCC

COMPLEX CASE ORDER/  
TRIAL MANAGEMENT CONFERENCE/  
TRIAL ORDERS

9:57 a.m. This is the time set for oral argument on Defendant's Motion to Modify Release Conditions.

State's Attorney:	Manuel Desi Rubalcaba
Defendant's Attorney:	John Agra
Defendant:	Present
Court Reporter:	Scott Kindle

Argument is heard.

Based on the arguments presented,

IT IS ORDERED reducing Defendant's secured appearance bond from \$750,000.00 to \$350,000.00, which includes all applicable surcharges.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

If bond is posted,

IT IS ORDERED releasing the Defendant subject to the supervision, restrictions and conditions of the Pretrial Services Agency, including electronic monitoring program and house arrest. Defendant is permitted to go to court, doctor's appointments, meetings with attorney, with approval of and confirmation with Pretrial Services.

ISSUED and FILED: Release Order.

Discussion is held re: Defendant's Motion for Complex Case.

There being no objection from the State,

COMPLEX CASE:

IT IS ORDERED granting the Defendant's Motion for Complex Case Designation for the following reasons:

Other (in detail): numerous civilian, law enforcement and expert witnesses and forensic evidence

SCHEDULING CONFERENCE & JOINT CASE MANAGEMENT PLAN:

IT IS FURTHER ORDERED setting a Scheduling Conference for **December 18, 2008 at 8:30 a.m.** in this division.

No less than two working days before the first Scheduling Conference, the state and defendant(s) shall file a Joint Case Management Plan expressly addressing the following issues:

1. Proposed trial date;
2. Length of trial and number of witnesses;
3. Final Trial Management Conference date;
4. Brief summary of alleged facts;
5. Discovery production schedule;
6. Witness interview schedule;
7. List of motions needing evidentiary hearing (length of hearing);
8. Schedule for filing motions, responses and replies;
9. Schedule for Motions in Limine;
10. Expert witness issues (dates for defense to disclose experts and opinions, if different date than called for in Rule 15);

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

11. Special investigative needs;
12. General status of plea negotiations;
13. Plea cutoff date;
14. Settlement conference date;
15. Interpreter needs;
16. Schedule of regular Case Management Conferences.

At the Scheduling Conference, the court will set a Trial Date and Case Management Conference schedule. Case Management Conferences will be presumptively set every 30 to 45 days, or more or less frequently as circumstances dictate.

The lawyers who will try the case and the defendant(s) shall attend each Case Management Conference. The purpose of the Case Management Conference will be to review pretrial preparation to date, resolve issues, and schedule activities to be accomplished before the next Case Management Conference.

**JOINT CASE MANAGEMENT REPORTS:**

No less than two working days before each Case Management Conference, the parties shall submit a Joint Case Management Report. This report will inform the court of:

1. The specific progress made since the last Case Management Conference in completing activities previously established by the court and the parties;
2. Specific case preparation to be completed before the next Case Management Conference;
3. Witnesses who have been interviewed in the preceding month;
4. Witnesses who will be interviewed in the upcoming month;
5. Pending issues to be resolved.

IT IS ORDERED that the parties shall participate in a settlement conference on or before March 29, 2009.

IT IS FURTHER ORDERED setting this matter for Trial Management Conference on **April 24, 2009 at 11:00 a.m. (time allotted: 1 hour)** in this division.

IT IS FURTHER ORDERED setting this matter for Trial on **April 29, 2009 at 10:30 a.m.** in this division.

Estimated length of trial: 4 weeks

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in this division by 5:00 p.m., **five (5) judicial days before the TMC.**

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to this division, copies of the following:

- A. **A jointly-completed time and witness estimate list.** The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.
- B. **A joint set of agreed-upon preliminary and final jury instructions,** including Preliminary Criminal RAJI or standard RAJI.
- C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993). **Proposed voir dire questions** which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.
- D. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents in evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

**MOTIONS IN LIMINE**

Any motions *in limine* shall be filed thirty (30) days before TMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): **"The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial."** See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions *in limine* without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of TMC.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

**PRETRIAL MOTIONS**

All pretrial motions must be filed in writing twenty (20) days before the TMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: *Rule 16.1[c]* *Rule 16.2[b]*; *State v. Anaya* 170 Ariz. 436, 443 (1992); *State v. Wilson* 164 Ariz. 406, 407 (1990) and *State v. Alvarado* 121 Ariz. 485 (1979).

**MARKING EXHIBITS**

**At least three (3) judicial days before the TMC**, the trial lawyers or their knowledgeable assistants shall appear in this division to present all exhibits. The parties shall advise the division, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. ***Counsel is directed to meet in person to exchange the exhibits before coming to court. Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*** Written stipulations to admit specified exhibits in evidence are encouraged.

IT IS FURTHER ORDERED that counsel, at the TMC, shall be prepared to discuss:

- A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and *voir dire*.
- D. Any special scheduling or equipment issues.
- E. Status of settlement of the case.

**EXPEDITED DISCOVERY**

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation the party seeking relief shall fax or e-mail a one page letter seeking forth the issue and counsel requested relief. The Court will convene a conference to resolve the issue.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-150364-001 DT

11/20/2008

A DEFENDANT'S FAILURE TO APPEAR AT THE FINAL TRIAL MANAGEMENT CONFERENCE, TRIAL, EVIDENTIARY HEARING, OR ANY HEARING SET BEFORE THE COURT MAY RESULT IN A BENCH WARRANT BEING ISSUED FOR HIS OR HER ARREST AND THE FINAL TRIAL MANAGEMENT CONFERENCE, TRIAL, EVIDENTIARY HEARING OR ANY HEARING SET BEFORE THE COURT MAY BE CONDUCTED IN THE DEFENDANT'S ABSENCE.

THE TRIAL DATE SHALL NOT BE CONTINUED UNLESS A WRITTEN MOTION TO CONTINUE IS FILED AT LEAST 5 DAYS BEFORE THE TRIAL. A CONTINUANCE WILL NOT BE GRANTED UNLESS THE MOTION SHOWS THAT EXTRAORDINARY CIRCUMSTANCES EXIST. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto.)

NOTICE: IT IS THE RESPONSIBILITY OF COUNSEL TO NOTIFY THE COURT BEFORE WHICH A HEARING WILL BE HELD 48 HOURS IN ADVANCE OF ANY HEARING NEEDING AN INTERPRETER FOR A VICTIM OR A WITNESS (10 BUSINESS DAYS FOR ANY LANGUAGE OTHER THAN SPANISH.)

**NEW LAST DAY: 05/25/2009**

10:30 a.m. Matter concludes.